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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
8

9 Jeffrey Charles Hoagland,

10 Petitioner,

11 v.

12 USA,

13 Respondent.
14

No. CV-16-00806-TUC-DCB

(CR-01-1629-TUC- DCB)

ORDER

15 June 6, 2016, Plaintiff filed a Motion to Vacate, Set Aside, or Correct Sentence
16 pursuant to 28 U.S.C. § 2255. (Motion (Doc. 1)). After being stayed pending a decision
17 by the Supreme Court in *Sessions v. Dimaya*, 138 S. Ct. 1208 (2018), the motion was fully
18 briefed August 10, 2018. In the interim, the Ninth Circuit issued an opinion in *United*
19 *States v. Watson*, 881 F.3d 782, 783-84 (9th Cir. 2018) which is binding precedent upon
20 which the Court relies and denies the Motion. On August 10, 2018, when the Petitioner
21 filed the Reply, he asked the Court to issue a certificate of appealability if it denies the
22 Petition because a Petition for Writ of Certiorari was submitted in *Watson* to the United
23 States Supreme Court. That petition has now been denied. *Watson v. United States*, 139 S.
24 Ct. 203 (2018). *Watson* is directly on point with this case and requires denial of Petitioner's
25 habeas motion. The Court will not issue a certificate of appealability.

26 **BACKGROUND**

27 Petitioner was charged and convicted by a jury for bank robbery in violation of
28 U.S.C. § 2113(a), with use of a deadly weapon or destructive device by threatening to use

1 a hand grenade during a crime of violence in violation of 924(c)(1)(A). The Court
2 sentenced the Defendant to 45 months for Count One, bank robbery, and 360 months for
3 Count Two, for the use of a deadly weapon during a crime of violence.

4 Petitioner challenges the constitutionality of his sentence based on the Supreme
5 Court's decisions in *Johnson v. United States*, 135 S. Ct. 2551 (2015) and *Sessions v.*
6 *Dimaya*, 138 S. Ct. 1208 (2018). In *Johnson*, the Supreme Court invalidated a prisoner's
7 sentence under the Armed Career Criminal Act (ACCA) because the definition of “violent
8 felony” for a predicate crime that “otherwise involves conduct that presents a serious
9 potential risk of physical injury to another” was unconstitutionally vague. *Johnson*, 135 S.
10 Ct. at 2557; 18 U.S.C. § 924(e)(2)(b)(ii). The Court in *Dimaya* invalidated a similarly-
11 worded definition of “crime of violence” in the Immigration and Nationality Act (“INA”)
12 because it likewise “devolv[ed] into guesswork and intuition, invited arbitrary
13 enforcement, and failed to provide fair notice.” *Dimaya*, 138 S. Ct. at 1223; 18 U.S.C. §
14 16(b).

15 Petitioner challenges his sentence for Count Two, use of a deadly weapon or
16 destructive device during a “crime of violence,” because the definition of the predicate
17 “crime of violence” in § 924(c) is unconstitutional following *Johnson* and *Dimaya*.

18 ANALYSIS

19 Petitioner argues that bank robbery should no longer be considered a predicate
20 “crime of violence” for purposes of § 924(c)(3) because its residual clause, subsection B,
21 suffers from the same unconstitutional vagueness identified by the Supreme Court in the
22 statutes at issue in *Johnson* and *Dimaya*. Under *Watson*, however, the Ninth Circuit Court
23 of Appeals found that a bank robbery conviction qualifies as a “crime of violence”
24 predicate offense.

25 In Count Two, Petitioner was charged, convicted, and sentenced for use of a deadly
26 weapon (destructive device) during a “crime of violence” in violation of 18 U.S.C.
27 924(c)(1). A “Crime of Violence” under 18 U.S.C § 924(c)(1) is defined as a felony that
28 has either: (A) an element the use, attempted use, or threatened use of physical force against

1 the person or property of another, or (B) that by its nature, involves a substantial risk that
2 physical force against the person or property of another may be used in the course of
3 committing the offense. 18 U.S.C. § 924(c)(3). Subsection (A) is known as the “force
4 clause” and is satisfied if the predicate crime has as an element the use of ““violent’
5 physical force—‘that is force capable of causing physical pain or injury.’” *Watson*, 881
6 F.3d at 784 (quoting *Johnson v. United States*, 559 U.S. 133, 140 (2010)). In *Watson*, the
7 court held that a felony conviction for bank robbery under § 2113(a) constitutes a “crime
8 of violence” under the “force clause,” § 924(c)(3)(A). *Watson*, 881 F.3d at 784.

9 The defendants in *Watson* were convicted of robbing a bank under § 2113(a) while
10 armed with handguns. The Court finds no distinction in the fact that, here, the Defendant
11 was armed with a hand grenade. In *Watson*, the Ninth Circuit rejected the argument that
12 after *Johnson* bank robbery no longer qualifies as a crime of violence. Following *Watson*,
13 as it must, the Court finds bank robbery fits the definition of “crime of violence” in §
14 924(c)(3), and the sentence imposed for Count Two is constitutional. The Court denies the
15 § 2255 motion.

16 Habeas relief under 28 U.S.C. § 2255 is only available to a petitioner in custody in
17 violation of the Constitution or laws of the United States. Under § 2255, “a district court
18 must grant a hearing to determine the validity of a petition brought under that section,
19 [u]nless the motions and the files and records of the case conclusively show that the
20 prisoner is entitled to no relief.” *United States v. Blaylock*, 20 F.3d 1458, 1465 (9th Cir.
21 1994). “The standard essentially is whether the movant has made specific factual
22 allegations that, if true, state a claim on which relief could be granted.” *United States v.*
23 *Withers*, 638 F.3d 1055, 1062 (9th Cir. 2011). A district court may dismiss a § 2255 motion
24 based on a facial review of the record “only if the allegations in the motion, when viewed
25 against the record, do not give rise to a claim for relief or are palpably incredible or patently
26 frivolous.” *Id.* at 1062–63. Because the Court finds that the Petitioner’s Motion does not
27 give rise to a claim for relief, it denies it without a hearing.

1 Rule 11(a), Rules Governing Section 2255 Cases, requires that the “district court
2 must issue or deny a certificate of appealability when it enters a final order adverse to the
3 applicant.” The standard for issuing a certificate of appealability is whether the applicant
4 has “made a substantial showing of the denial of a constitutional right.” 28 U.S.C. §
5 2253(c)(2). “Where a district court has rejected the constitutional claims on the merits, the
6 showing required to satisfy § 2253(c) is straightforward: The petitioner must demonstrate
7 that reasonable jurists would find the district court's assessment of the constitutional claims
8 debatable or wrong.” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). To meet the “threshold
9 inquiry” on debatability, the Ninth Circuit instructs that the petitioner “must demonstrate
10 that the issues are debatable among jurists of reason; that a court could resolve the issues
11 [in a different manner]; or that the questions are adequate to deserve encouragement to
12 proceed further.” *Lambright v. Stewart*, 220 F.3d 1022, 1025 (9th Cir. 2000) (internal
13 citations omitted).

14 Petitioner’s challenge to his conviction and sentence under § 924(c) runs directly
15 contrary to controlling Ninth Circuit authority. The *Watson* decision is binding precedent
16 on this Court, and as the Ninth Circuit noted, it reached the same conclusion as “every
17 other circuit to address the same question.” *Watson*, 881 F.3d at 785. Given the certainty
18 of dismissal of the Petition under *Watson*, the Court will not issue a certificate of
19 appealability.

20 **Accordingly,**

21 **IT IS ORDERED** that the Motion to Vacate, Set Aside, or Correct Sentence
22 Pursuant to 28 U.S.C. § 2255 (Document 167) filed in CR 01-1629 TUC DCB and
23 (Document 1) filed in CV 16-806 TUC DCB is DENIED.

24 **IT IS FURTHER ORDERED** that Civil case number CV 16-806 TUC-DCB is
25 DISMISSED with prejudice.

26 **IT IS FURTHER ORDERED** that the Clerk of the Court shall enter judgment
27 accordingly.
28

1 **IT IS FURTHER ORDERED** that a certificate of appealability as to his claim that
2 federal bank robbery is not a crime of violence under 18 U.S.C. § 924(c) is DENIED.

3 Dated this 25th day of March, 2019.

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A handwritten signature in black ink, appearing to read "David C. Bury", is written over a horizontal line.

Honorable David C. Bury
United States District Judge